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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TERRENCE DAVIS, on behalf of himself
and all others similarly situated,

Plaintiffs,

v.

MICHAEL J. ASTRUE, Commissioner of the
Social Security Administration,

Defendant

JOHN DOE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of the
Social Security Administration,
Defendant

CIVIL ACTION Nos.: 3:06-CV-6108 MHP
& 3:09-CV-980 MHP

STIPULATION AND ~~PROPOSED~~ ORDER

STIPULATION AND PROPOSED ORDER

1 Plaintiffs Terrence Davis and John Doe ("Plaintiffs") and Defendant Michael J. Astrue
 2 ("Defendant") hereby submit this Stipulation and Proposed Order revising the schedule for
 3 further briefing and discovery previously proposed by the parties and approved by the Court on
 4 November 16, 2010 ("Order"). (ECF No. 191.) Subject to the Court's approval, the parties have
 5 agreed as follows:

6 1. After the Court entered the Order, the parties proceeded with discovery concerning
 7 the First Phase Issues of "(i) that Plaintiffs lack standing to bring their claims; (ii) that Plaintiffs'
 8 claims are barred by the applicable statute of limitations; and (iii) that the Court lacks
 9 jurisdiction to award Plaintiffs' requested remedies (collectively, 'First Phase Issues')." (ECF
 10 No. 191 at 2:6-10.) Disputes have arisen between the parties. The disputes involve the extent to
 11 which discovery sought by Plaintiffs, including the Fed. R. Civ. P. 30(b)(6) depositions and
 12 documents recently requested by Plaintiffs, are relevant to First Phase Issues, and the following
 13 request, refused by Plaintiffs, made by Defendant:

14 With regard to the depositions of individuals and organizations other than
 15 Plaintiffs that Defendant previously requested, we ask you to state whether
 16 or not you will stipulate that the only witnesses (other than SSA
 17 employees) you will rely on in opposing Defendant's First Phase motion
 18 for summary judgment will be Plaintiffs. If you are not willing to so
 stipulate then Defendant will be prepared to issue subpoenas to have those
 witnesses testify.

19 2. To better enable both the parties and the Court to assess the need for the disputed
 20 discovery, the parties agree that these disputes would be best resolved after Plaintiffs and
 21 Defendant each file their respective opening brief regarding First Phase Issues. By way of
 22 example, Defendant could then seek to depose any third party that Plaintiffs actually rely upon in
 23 opposing Defendant's motion for summary judgment as to the First Phase Issues as opposed to
 24 the current schedule which would require Defendant to depose every potentially relevant third
 25 party before filing its motion. Similarly, Plaintiffs could seek to depose Defendant pursuant to
 26 Fed. R. Civ. P. 30(b)(6) to respond to the arguments Defendant makes in his opening brief on the
 27 First Phase Issues.
 28

1 3. The parties therefore propose that the schedule set forth in the Order be revised so as
2 to provide each party with an opportunity to take discovery after each side files an opening brief
3 regarding First Phase Issues. The parties also propose a short continuance in the date by which
4 Defendant will file his opening brief on First Phase Issues because counsel for Defendant had a
5 3-5 day bench trial previously scheduled to commence on February 7, 2011 continued to
6 February 22, 2011 and the continuance took place after the date of the earlier stipulation setting
7 the schedule.

8 4. The parties propose the following revised schedule:

9 a. Defendant shall file an opening brief addressing First Phase Issues on **March 11,**
10 **2011.**

11 b. Plaintiffs shall have until **April 25, 2011,** to take any additional discovery
12 regarding First Phase Issues.

13 c. Plaintiffs shall file an opposition brief addressing First Phase Issues on **May 25,**
14 **2011.**

15 d. Defendant shall have until **July 11, 2011,** to take any additional discovery
16 regarding First Phase Issues.

17 e. Defendant shall file a reply brief addressing First Phase Issues on **August 1, 2011.**

18 f. A hearing on the briefing specified above shall take place on **August 15, 2011.**

19 5. The parties reserve their right to seek enlargements of time, as may be required.
20

21 Dated: January 14, 2011

/s/ Steven Bruce
Attorneys for Plaintiff

22
23
24
25 Dated: January 14, 2011

/s/ Michael T. Pyle
Attorneys for Defendant

~~[PROPOSED]~~ ORDER

Pursuant to stipulation, IT IS SO ORDERED:

1. Defendant shall file an opening brief addressing First Phase Issues on **March 11, 2011**.
2. Plaintiffs shall have until **April 25, 2011**, to take any additional discovery regarding First Phase Issues.
3. Plaintiffs shall file an opposition brief addressing First Phase Issues on **May 25, 2011**.
4. Defendant shall have until **July 11, 2011**, to take any additional discovery regarding First Phase Issues.
5. Defendant shall file a reply brief addressing First Phase Issues on **August 1, 2011**.
6. A hearing on the briefing specified above shall take place on **August 15, 2011**.

DATED: 1/18/2011

